

REMARKS

This Amendment is responsive to the Office Action mailed March 1, 2010, which has been carefully considered. At the time of the Office Action, claims 37, 39-62 and 66-68 were pending, with claim 52 withdrawn from consideration. Thus, claims 37, 39-51, 53-62 and 66-68 were presented for examination. Claims 37, 66, 67 and 68 are of independent form.

With this Amendment, claim 37 has been amended and claims 66-68 cancelled, without prejudice. New independent claim 69 has been added to the application. Support for the amended and new claims is found in the originally filed application, particularly at locations identified hereinafter. Accordingly, Applicant believes no new matter has been added to the application.

Reconsideration and allowance of the subject application are respectfully requested for at least the following reasons.

35 U.S.C. § 103 Rejection

Claims 37, 39-51, 53-62 and 66-68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mulier et al., U.S. Patent No. 6,096,037 (hereinafter "Mulier"), in view of Huitema et al., U.S. Patent No. 5,562,702 (hereinafter "Huitema"), and further in view of Eggers et al., U.S. Patent No. 6,032,674 (hereinafter "Eggers").

Without acquiescing to the properness of the foregoing rejection, Applicant has elected to amend claim 37 and cancel claims 66-68, without prejudice, to expedite prosecution and further distinguish from the art. Applicant will now address the cited art in relation to the amended claims.

Applicant has amended independent claim 37 to include the features of the dimensional change sensor configured to grasp the tissue and move relative to the dimensional change of the tissue while having a grasp of the tissue further comprising a first clamp having a first jaw member and a second jaw member and a second clamp having a first jaw member and a second jaw member; and wherein at least one of the first clamp and the second clamp is movable relative

to the other clamp. Support for the amendments may be found, for example, in the figures and paragraphs [0036]-[0051] of U.S. Publication No. 2004/0162552.

From review of the art, none of the references are understood to disclose a first clamp and a second clamp, or furthermore, the first clamp and the second clamp being movable relative to the other clamp to change a distance between the first and second clamps. In the foregoing manner, with the Applicant's invention, the first and second clamps may move relative to the dimensional change of the tissue while having a grasp of the tissue to allow a surgeon or operator to more precisely shrink or contract the tissue being treated. The art is not understood to provide such a feature of grasping the tissue with multiple clamps, and using a movement of at least one of the clamps relative to the dimensional change of the tissue to more precisely shrink or contract the tissue being treated.

Accordingly, the Applicant believes that it has been demonstrated that the claims herein define over the teachings of the cited references. In view of the foregoing remarks, it is respectfully submitted that independent claim 37 is patentable over the art. Allowance of independent claim 37, as well as the pending claims which depend directly or ultimately therefrom, is respectfully requested.

New Claims

The Applicant has added new claim 69 to the application. Claim 69 is similar to claim 37, albeit the preamble simply recites an electrosurgical instrument and the element of a fluid outlet has been eliminated from the body of the claim.

No claim fee is believed necessary as the number of new claims is not understood to exceed the number of claims previous paid. However, in the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account 50-2121.

SUMMARY

The Applicant respectfully submits that, in light of the foregoing remarks, and having dealt with all the rejections raised by the Examiner, the claims are in order for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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